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MISSION SAN JOSE AIRPORT, LLC and MISSION YOGURT, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

AREAS USA SJC, LLC, a California limited liability company,

Plaintiff,

v.
MISSION SAN JOSE AIRPORT, LLC, a Colorado limited liability company, and MISSION YOGURT, INC., a Colorado corporation.

Defendants.

CASE NO. CV11-04487 HRL

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S PROPOSED VOIR DIRE QUESTIONS AND VERDICT FORM

PLACE: Courtroom 2

JUDGE: Hon. Howard R. Lloyd

Complaint Filed: September 9, 2011
Trial Date: January 7, 2013

1 Defendants Mission San Jose Airport, LLC and Mission Yogurt, Inc. (collectively,
 2 "Defendants" or "Mission") set forth herein their objections the voir dire questions and verdict form
 3 proposed by Plaintiff Areas USA SJC, LLC ("Areas"). The parties have conferred on these
 4 objections. The below represents those on which there is continued disagreement.

5 **I. VOIR DIRE QUESTIONS**

6 Mission objects to Areas' proposed *voir dire* questions 6, 7 and 9, on the grounds that they
 7 are argumentative and constitute an improper attempt to "condition" the jury in Areas' favor. These
 8 questions suggest the arguments that Areas intends to make at trial on its behalf and are an improper
 9 attempt to condition the jury against Mission's position, which is that either (1) Areas' actions mean
 10 that no contract was formed or (2) Areas' actions mean that Mission's refusal to pay rent under the
 11 contract was justified.

12 **II. VERDICT FORM**

13 Mission objects to Plaintiff Areas USA SJC, LLC's Proposed Form of Verdict for Trial
 14 ("Proposed Verdict Form") as follows:

15 First, Areas' Proposed Verdict Form includes a lengthy preamble, suggesting that Mission
 16 has stipulated to liability and that all that remains for decision is damages. That is not true. Mission
 17 has agreed to certain facts, but has not stipulated to liability. Further, Mission has substantial
 18 defenses both to contract formation and to liability, and Areas' Proposed Verdict Form ignores those
 19 defenses.

20 Second, Areas' Proposed Verdict Form includes a statement of the burden of proof, which
 21 Mission believes is unnecessary, as the jury will already have been instructed on the applicable
 22 burdens of proof.

23 Third, Areas has misstated the standard for proving intentional misrepresentation or
 24 concealment. Both can be proved by proving reckless disregard for the truth. Further, the CACI
 25 instructions include reference to "reasonable reliance," not "justifiable reliance," which is what
 26 Areas' Proposed Verdict Form includes. Using different terms in the instructions and the Verdict
 27 Form risks confusing the jury. Also, Mission has stated a form of fraud equating to negligent

1 misrepresentation (under Civil Code Section 1572) and Areas' Proposed Verdict Form omits a
2 description of that claim as well.

3 Fourth, Mission has moved for leave to add affirmative defenses of unilateral and mutual
4 mistake. If granted, those defenses should be included in the final verdict form.

5 For all the above reasons, Mission respectfully requests that the Court use the Verdict Form
6 proposed by Mission and not the one proposed by Areas.

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8 **III. CERTIFICATION**

9 I hereby certify that I have met and conferred with counsel prior to filing these objections in
10 accordance with the Court's Standing Order re: Pretrial Preparation.

11

12 Dated: December 11, 2012

13 BRYAN CAVE LLP

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15 By: /s/ Daniel T. Rockey

16 Daniel T. Rockey

17 Attorneys for MISSION SAN JOSE AIRPORT,
LLC and MISSION YOGURT, INC.

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